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BEFORE THE ARIZONA CORPORATION COMMISSION

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2006 MAY 11 P 4:37

AZ. CORP. COMMISSION
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IN THE MATTER OF THE FORMAL
COMPLAINT AND REQUEST FOR
DECLARATORY JUDGMENT OF
PAC-WEST TELECOMM, INC.
AGAINST QWEST CORPORATION

DOCKET NO. T-03693A-05-0875
T-01051B-05-0875

**QWEST CORPORATION'S
ANSWER TO PAC-WEST
TELECOMM'S FIRST AMENDED
COMPLAINT FOR
DECLARATORY JUDGMENT;
QWEST'S FIRST AMENDED
COUNTERCLAIM**

Respondent Qwest Corporation ("Qwest") hereby responds to and answers the First Amended Complaint for Declaratory Judgment ("Complaint") filed by Pac-West Telecomm, Inc. ("Pac-West") on April 11, 2006. Qwest further files its First Amended Counterclaims against Pac-West. For the reasons set forth herein, Qwest asserts that the Arizona Corporation Commission ("Commission") should dismiss the Complaint in all respects.

RESPONSE TO ALLEGATIONS IN THE COMPLAINT

Qwest hereby responds to Pac-West's allegations. Unless specifically admitted in this section, Qwest denies each and every allegation in Pac-West's Complaint.

1. Qwest is a public service corporation qualified to do and is doing business in Arizona. Qwest is an incumbent local exchange company providing local exchange and other telecommunication services throughout Arizona.

2. Qwest acknowledges that Pac-West and Qwest are parties to an Interconnection Agreement ("ICA") between Qwest and Pac-West Telecomm, Inc., dated

1 September 30, 1999, which was approved in Commission Decision No. 62137 on
2 December 14, 1999.

3 3. Qwest admits that the ICA and subsequent amendments govern the parties'
4 respective interconnection and payment obligations. Further, Qwest admits that a dispute
5 has arisen between Qwest and Pac-West regarding their respective payment obligations
6 under the ICA. Qwest denies that this dispute involves the location of interconnection or
7 requirements to maintain the physical network on either parties' side of the Point of
8 Interconnection ("POI").

9 4. Qwest admits that Pac-West and Qwest entered into the InterLCA
10 Amendment on September 11, 2000, for the purpose of allowing Pac-West to obtain
11 interconnection facilities as described in that amendment from Qwest.

12 5. Qwest asserts that Section 1.3 of Attachment 1 to the InterLCA Amendment
13 speaks for itself.

14 6. To the extent that Pac-West claims to apply the terms of the 20 mile
15 discount to any facility other than an InterLCA Facility, Qwest denies the allegation that
16 Section 1.5 of Attachment 1 to the InterLCA Amendment is applicable to miles of any
17 facility other than an InterLCA Facility based on Relevant Use Factor ("RUF"), including
18 Direct Trunk Transport ("DTT") facilities ordered pursuant to the original ICA. Qwest
19 further denies that Section 1.5 of Attachment 1 to the InterLCA Amendment is applicable
20 to miles of any facility where there is not a mutual, reciprocal exchange of local calls.

21 7. Qwest admits that Pac-West and Qwest entered into the Single Point of
22 Presence ("SPOP") Amendment on January 12, 2001, for the purpose of establishing one
23 point of presence in a LATA, and to order facilities to cross local calling areas.

24 8. Qwest admits sending new invoices to Pac-West, for re-calculated transport
25 and switching services, after the United States District Court for the District of Arizona
26 vacated a portion of Commission Decision No. 66385 on December 17, 2004.

27 9. Qwest denies the allegation that Qwest erroneously charged Pac-West for
28 DTT facilities ordered pursuant to the original ICA. Qwest denies the allegation that

1 Section 3.1 of Attachment 4 to the ICA requires Qwest to provide Pac-West DTT
2 facilities at virtually no cost to Pac-West.

3 10. Qwest denies the allegation that Qwest erroneously charged Pac-West the
4 full cost of certain DTT facilities, without deducting the cost of Qwest's relative use,
5 based on requirements set forth in the InterLCA Amendment. Pac-West states no basis
6 for nonpayment of amounts billed by Qwest subsequent to the District Court's judgment
7 referenced above.

8 AFFIRMATIVE DEFENSES

9 11. The plain language of the ICA and all supporting attachments, schedules,
10 appendices provide the process for Pac-West to order DTT, and the rates for DTT to be
11 charged to Pac-West for DTT.

12 12. Pac-West asserts that Qwest has over-billed Pac-West for DTT facilities
13 ordered pursuant to the InterLCA Amendment. Pac-West argues that "Qwest is in breach
14 of the Interconnection Agreement, as amended, in refusing to reduce the charge for these
15 interconnection facilities based on Qwest's use of the facility." Pac-West ignores that by
16 a letter dated August 16, 2005, from Qwest's outside counsel to Pac-West's counsel,
17 Qwest acknowledged that it did not provide Pac-West with the RUF credit for the first
18 twenty (20) miles of the inter-LCA facilities for the time period of the dispute. Qwest
19 calculated that amount of credit to be \$10,632.30, which has already been subtracted from
20 the amount Qwest has stated it is currently owed.

21 13. The course of conduct and dealings between the parties shows that Qwest
22 has properly billed Pac-West.

23 14. The course of conduct and dealings between Qwest and all similarly situated
24 carriers shows that Qwest is entitled to bill for DTT.

25 15. Custom and practice in the industry confirm that Qwest is entitled to bill for
26 DTT, as it has with Pac-West.

27 16. By its acceptance of credits for DTT charges, Pac-West is estopped from
28 denying that the credited bills, which have subsequently been re-billed, were incorrect.

1 **COUNTERCLAIMS**

2 17. Qwest brings these Counterclaims against Pac-West as a result of Pac-
3 West's breach of the terms and conditions of the ICA, as amended. This Counterclaim
4 consists of three counts as follows:

5 **COUNT I**

6 **(Breach of Interconnection Agreement - Payment)**

7 18. Qwest incorporates paragraphs 1 through 17, above.

8 19. Despite continued interconnection with Qwest facilities and services
9 rendered pursuant to the ICA, Pac-West has wrongfully withheld payment of
10 \$541,539.98. Qwest has properly billed these amounts, pursuant to the ICA and related
11 amendments. Pac-West has not made any payments to Qwest under the ICA since May,
12 2005. That amount is immediately due and payable to Qwest. Because the
13 interconnection is still in place, the amount owed increases each month. Pac-West should
14 pay all past due amounts, currently due amounts, and make future payments timely.
15 Without waiving its right to receive compensation, Qwest should also be entitled to
16 disconnect Pac-West if it fails to pay amounts ordered to be paid.

17 **COUNT II**

18 **(In the Alternative--Breach of Interconnection Agreement - Service)**

19 20. Qwest incorporates paragraphs 1 through 19, above.

20 21. Upon information and belief, all traffic originated by Qwest's end users that
21 is bound for Pac-West is ISP bound traffic. Despite this, Pac-West has obtained all of its
22 interconnection facilities and continues to take service from Qwest pursuant to the SPOP
23 Amendment.

24 22. Paragraph 9 of the SPOP Amendment states "SPOP in the LATA is not
25 available for the sole purpose of delivering ISP bound, interstate in nature, traffic."
26 Therefore, Pac-West's conversion of all of its InterLCA Facilities to SPOP/DTT and other
27 LIS facilities pursuant to the SPOP Amendment was inappropriate and contrary to the
28 SPOP Amendment. Accordingly, Pac-West should only be able to obtain interconnection

1 facilities that cross local calling area ("LCA") boundaries pursuant to the InterLCA
2 Amendment.

3 23. Because the provisions of the InterLCA Amendment are applicable to Pac-
4 West's traffic and the facilities used to exchange that traffic, Qwest is currently owed
5 \$1,212,094.70 for service rendered since August 2003 to January 2006. This calculation
6 has RUF-related volumes subtracted from it. Calculation of RUF-related volumes was
7 determined by using 20 miles of all facilities in Arizona, from 2000 through January 2006.
8 However, no RUF should be subtracted in cases where Pac-West has employed its
9 unlawful VNXX scheme.

10 **COUNT III**

11 **(In the Alternative--Breach of Interconnection Agreement - Service)**

12 24. Qwest incorporates paragraphs 1 through 23, above.

13 25. Pac-West employs its disguised intraLATA interexchange routing scheme
14 known as VNXX, which violates state law and the ICA. Pac-West may not use LIS
15 facilities of any kind for its VNXX service. Pac-West should be required to compensate
16 Qwest at the rates applicable to tariffed private line services and special access where Pac-
17 West has employed VNXX.

18 **RELIEF REQUESTED**

19 **WHEREFORE**, Qwest respectfully requests the Commission provide the
20 following relief:

21 A. Deny all the relief requested by Pac-West in its Complaint;

22 B. Invalidate all Pac-West claims for credits seeking or bills charging for DTT
23 facilities ordered by Pac-West pursuant to the original ICA or InterLCA Amendment, and
24 issue a decision ordering Pac-West to pay Qwest for all amounts owed pursuant to the
25 ICA, which amount is \$541,539.98, as of April 2006, and to pay current charges timely;

26 C. Alternatively, issue a decision ordering Pac-West to pay Qwest for all
27 amounts owed pursuant to the ICA if all service is to be rated under the InterLCA
28 Amendment;

1 D. Declare Pac-West's service ineligible for rating under the SPOP
2 Amendment;

3 E. Prohibit Pac-West from routing VNXX traffic to Qwest utilizing LIS
4 facilities;

5 F. Order Pac-West to pay Qwest for Pac-West's previous and future unlawful
6 use of LIS facilities in an amount equal to private line service plus special access, where
7 Pac-West has utilized its VNXX scheme; and

8 G. Any and all other equitable relief that the Commission deems appropriate.

9 RESPECTFULLY SUBMITTED this 11th day of May, 2006.

10 Norman Curtright
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15 -and-

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26 filing this 11th day of May, 2006, to:

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